(5) (8)

Nos. 85-1239 and 85-1406

Supreme Court, U.S.
FILED
JUL 29 1986
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1986

AMOCO PRODUCTION COMPANY, ET AL., PETITIONERS

v.

PEOPLE OF THE VILLAGE OF GAMBELL, ET AL.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS

v.

PEOPLE OF THE VILLAGE OF GAMBELL, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

DONALD S. COOPER
Alaska Legal Services Corporation
550 West 8th Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6282
Counsel for Respondents

DONALD B. AYER
Acting Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217
Counsel for Petitioners in No. 85-1406

E. EDWARD BRUCE
COVINGTON & BURLING
1201 Pennsylvania Ave., N.W.
P.O. Box 7566
Washington, D.C. 20044
(202) 662-6000
Counsel for Petitioners in No. 85-1239

PETITIONS FOR A WRIT OF CERTIORARI FILED JANUARY 22, 1986 (NO. 85-1239), AND FEBRUARY 21, 1986 (NO. 85-1406)
CERTIORARI GRANTED JUNE 2, 1986

85 PP

In the Supreme Court of the United States

OCTOBER TERM, 1986

Nos. 85-1239 and 85-1406

AMOCO PRODUCTION COMPANY, ET AL, PETITIONERS

v.

PEOPLE OF THE VILLAGE OF GAMBELL, ET AL.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS

v.

PEOPLE OF THE VILLAGE OF GAMBELL, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

TABLE OF CONTENTS*

	Page
1. District Court Docket Entries in No. A85-184CIV	1
2. District Court Docket Entries in No. A85-201CIV	6
3. Court of Appeals Docket Entries	9
4. Complaint in No. A85-184CIV (originally No. N83-03CIV)	15
5. Complaint in No. A85-201CIV	20

---

* The relevant opinions of the district court and the court of appeals, the judgment of the court of appeals, and several relevant items from the record are printed in the appendix to the petition for a writ of certiorari in No. 85-1406, and have not been reproduced.

Contents—Continued: Page

6. Affidavit of Earl D. Stout (Intervenors' Exhibit E in No. A85-184CIV) 25
7. Affidavit of Hugh P. Bushnell (Intervenors' Exhibit M in No. A85-184CIV) 30
8. Affidavit of Earl D. Stout (Intervenors' Exhibit A in No. A85-201CIV) 35
9. Affidavit of Dana B. Grannell (Intervenors' Exhibit B in No. A85-201CIV) 41
10. Affidavit of R.J. Criswell (Intervenors' Exhibit C in No. A85-201CIV) 46
11. Affidavit of Joseph G. Jorgensen (submitted to the court of appeals by appellants in 9th Cir. No. 85-3877) 56
12. Affidavit of Ronald L. Little (submitted to the court of appeals by appellants in 9th Cir. No. 85-3877) 73
13. Order granting Petitions for a Writ of Certiorari 81

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

A85-184CIV

THE PEOPLE OF THE VILLAGE OF GAMBELL,
AN ALASKAN NATIVE IRA ASSOCIATION,
PEOPLE OF THE VILLAGE OF STEBBINS,
AN ALASKAN NATIVE IRA ASSOCIATION,
PLAINTIFFS

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE
UNITED STATES DEPARTMENT OF THE INTERIOR

ARCO ALASKA INC., EXXON CORP. MOBIL
OIL CORP., SHELL OIL CO., TEXACO INC.
AND UNION OIL OF CALIFORNIA,
DEFENDANT-INTERVENORS

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
3/4/83	1	Complaint For Preliminary And Permanent Injunctive Relief Filed.
	6	Filed Motion For An Order Granting A Preliminary Injunction.
	7	Filed Memorandum In Support Of Plaintiffs' Request For A Preliminary Injunction.
		Issued Summons to U.S. DEPT OF INTERIOR, JAMES WATT, UNITED STATES OF AMERICA C/O U.S. ATTY, UNITED STATES OF AMERICA C/O US ATTY ANCH

DATE	NR	PROCEEDINGS
3/10/83	12	Filed Motion For Leave To Intervene As Defendants.
	15	Filed Statement Of Federal Defendants' Non-Opposition To Motion For Leave To Intervene As Defendants.
	16	Filed Statement Of Plaintiffs' Non-Opposition To Motion For Leave To Intervene As Defendants.
	17	Filed Defendant-Intervenors' Answer To Complaint.
3/14/83	21	Filed Order Denying Preliminary Injunction.
	22	Filed Plaintiff's Notice Of Appeal.
3/16/83	24	Filed Memorandum Of Defendant-Intervenors In Opposition To Motion For Preliminary Injunction with Exhibit 1—The "FEIS" Exhibit 2—Secretarial Issues Document, Exhibit 3—The "DEIS", Exhibit 4—Final Notice Of Sale, Exhibit 5—Consistency Determination accompanying same.
3/17/83	32	Filed Motion To Dismiss.
	33	Filed Federal Defendant's Memorandum In Support Of Motion To Dismiss And In Opposition To Motion For Preliminary Injunction.
	35	Filed Plaintiff's Reply To Memorandum Opposing Their Motion For A Preliminary Injunction.
3/29/83	43	Filed Plaintiff's Motion For Summary Judgment.
	44	Filed Plaintiff's Memorandum In Support Of Their Motion For Summary Judgment with exhibits D, E, F, G, H, I and J attached.

DATE	NR	PROCEEDINGS
4/1/83	46	Filed Memorandum Of Defendant-Intervenors In Opposition To Plaintiffs' Motion For Summary Judgment with exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18
4/4/83	48	Filed Minute Order From Chambers setting oral argument on plt's motion for summary judgment for April 1, 1983 at 10:30 am.
4/4/83	49	Filed Court minutes of April 1, 1983 hearing of oral argument on Plaintiff's Motion for summary judgment.
4/4/83	52	Filed in Anchorage the court's Memorandum And Order denying Plt's motion for summary judgment as to both claims for relief.
4/7/83	54	Filed Federal Defendants' Response To Plaintiffs' Motion For Summary Judgment with Certificate of service and exhibits A thru E attached.
4/13/83	56	Filed Notice Of Appeal by plaintiffs, from Order Dismissing the Complaint. Cys to attys
	57	Filed Notice Of Appeal by plaintiffs, from Order Denying Summary Judgment. Cys attys
4/14/83	59	Filed Memorandum And Order granting summary judgment to federal defendants.
	60	Filed Judgment granting summary judgment to federal defendants, copies distributed to attorney. Case closed
	62	Filed plt's Application For Order Granting Injunction Pending Appeal.

DATE	NR	PROCEEDINGS
4/14/83	63	Filed Memorandum In Support Of Plaintiffs' Application For Injunction Pending Appeal. (lodged order)
	66	Filed Federal Defendants' Memorandum In Opposition To Plaintiff's Motion For Injunction Pending Appeal, with certificate of service attached.
	67	Filed Memorandum Of Defendant-Intervenors In Opposition To Plaintiff's Motion For Injunction Pending Appeal with exhibit 1 and Affidavit Of Service By Hand Delivery attached.
	69	Filed Memorandum And Order denying pltf's mtn for an injunction pending appeal.
4/18/83	71	Fld CA Order enjoining appellees from awarding any leases on Lease Sale 57; oral argument set 11 am on 4-26-83 in SF—cy: Judge
5/17/83	77	Fld CA Order denying application for injunction; set briefing schedule—cy: judge
1/8/85	84	Fld JUDGMENT from CA w/attach opinion affirming D.C. in part, reversed in part and remanded. Cy: Joan Lee, Donald Cooper, Cynthia Pickering, Carl Bauman & Judge von der Heydt.
4/3/85	85	Fld pltfs' mot for prelim injunct on remand w/atch memo & exhibits (exhibits in red folder behind case file).
4/19/85	90	Fld intvnr/defts' memo in opp to mot for prelim injunct w/atch exhibits.
4/23/85	91	Fld fed defts' opp to mot for prelim injunct w/atch exhibits.

DATE	NR	PROCEEDINGS
5/1/85	93	Fld intvnr/defts' notice of filing orig afdvt of Hugh P. Bushnell.
5/2/85	96	Fld pltfs' resp to defts' opp to mot for prelim injunct w/atch exhibits.
5/9/85	102	Fld D-3 to D-8s' mot for leave to file intervenor's response re plts' reply w/attach response & affs.
5/23/85	103	Fld cy MEMO & ORDER re A85-201/A85-184 CIV, pltf mot for PI DENIED. cy-cnsl.
5/24/85	104	Fld pltf's Notice of Appeal re Order of 5/23/85, dkt#103. cc: cnsl.
5/30/85	105	Fld MO granting inter-defts' mot for leave to file add material. cc: cnsl.
5/30/85	106	Fld MO stating court will not entertain mot for stay pending appeal. cc: cnsl.
1/3/86	111	FLD CA Judgment. Remanded & reversed. cy: James Bamberger, Bruce Landon, Carl Bauman, Judge von der Heydt.
1/8/86	112	Fld PRELIM INJUNCTION. No bond required at this time. Cy Cnsl & A85-201 CIV. Cy O&J 2685.
1/31/86	113	Fld joint mot for stay.
1/31/86	113	Fld ORDER approving joint mot for stay. Cy Cnsl.

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

A85-201CIV

THE PEOPLE OF THE VILLAGE OF GAMBELL, AN ALASKAN NATIVE IRA ASSOCIATION, AND NUNAM KITLUSISTI, A NATIVE INTERTRIBAL ORGANIZATION, PLAINTIFFS

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS

AMOCO PRODUCTION CO. ARCO ALASKA, INC., EXXON CORP., SHELL WESTERN E&P, INC., OHIO ALASKA PETROLEUM CO., TEXACO, INC., AND UNION OIL CO. OF CALIFORNIA, DEFENDANT-INTERVENORS

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
4/25/85	1	Fld cmplt. Issued summs.
4/25/85	2	Fld pltf mot for PI w/exhbs A-J (exhbs fld in red binders case file) w/memo.
4/25/85	3	Fld pltf req to consolidate this action w/A85-184 CIV.
5/6/85	4	Fld stip re application for intervention as defts & stip for ext of time for answer dedlne to match fed defts due date.
5/8/85	6	Fld fed defts oppo to pltf request to consolidate.
5/9/85	4	Fld ORDER granting intervention of add'l defts. cy cnsl

DATE	NR	PROCEEDINGS
4/9/85	7	Fld D-3 thru D-9 oppo to pltf mot for consolidation.
4/9/85	8	Fld pltf resp to deft oppo to req to consolidate.
4/10/85	9	Fld fed deft oppo to mot for PI w/exhbs (exhbs in red binder behind case file) (exhbs #2, #4, #5, #6-#10, no #1 or #3 fld)
4/10/85	11	Fld D-3 thru D-9 memo in oppo to pltf mot for PI affs & exhbs D, E, & F & G (exhbs fld in red binder behind case file)
4/17/85	12	Fld pltf resp to deft oppo to mot for PI w/exhbs.
4/17/85	13	Fld City of St. Paul mot for lv to file amicus curiae brief w/memo & exhb (table of contents of brief).
4/21/85	14	Fld MO; this case hereby assigned to Judge vdH. cy cnsl, Judge vdH.
4/23/85	17	Fld MEMO & ORDER; pltf mot for PI denied. cy cnsl, A85-184 CIV.
4/30/85	18	Fld MO; City of St. Paul's mot for lv to file amicus brief GRANTED, pltf mot to consol hrings of pnding mots for PI in A85-201/A85-184 GRANTED, cases otherwise not consol. cy cnsl.
4/30/85	19	Fld MO; crt will not entertain mot for stay pending appeal. cy cnsl, A85-184.
6/24/85	20	Fld D-1 & D-2's answer.
7/2/85	22	Fld D-3 thru D-9 answer
7/19/85	22	Fld Desig. of record by Intervenor-Appellee Amoco Prod. Co.
7/30/85		Record mailed to 9CAA
1/8/86	26	Fld cert cy PRELIM INJUNC. No bond required at this time. Cy Cnsl & O&J 2685.

DATE	NR	PROCEEDINGS
1/31/86	27	Fld defts' joint mot for stay.
2/3/86	27	Fld ORDER granting stay until 3 weeks after U.S. Supreme Court decides whether it will accept certiorari on decision of 9th Circuit. cc:cnsl

IN THE UNITED STATES DISTRICT COURT OF APPEALS FOR THE NINTH CIRCUIT

85-3877

PEOPLE OF THE VILLAGE OF GAMBELL,
PEOPLE OF THE VILLAGE OF
STEBBINS, AND NUNAM KITLUTSISTI, APPELLANTS

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND
THE UNITED STATES DEPARTMENT
OF THE INTERIOR, APPELLEES

ARCO ALASKA, INC., AMOCO PRODUCTION CO., ET AL.,
INTERVENOR-APPELLEES

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
6/3/85	DOCKETED CAUSE & ENTERED APPEARANCES OF COUNSEL. EMK
6/3/85	Filed aplt's emergency motion for injunction pending appeal. (CIVATT) 6/1 -dmf-
6/3/85	Filed aplees' (Amoco Production, et al) memorandum in opposition to motion for injunction pending appeal. (CIVATT) 6/3 -dmf-
6/4/85	Filed federal aplees' opposition to motion for injunction pending appeal. (CIVATT) 6/4 -dmf-
6/5/85	Filed order (SNEED, NELSON, BEEZER) Exploration of the Alaska Continental Shelf pursuant to Lease Sales No. 57 and No. 83 by the intervenors-appellees oil companies is temporarily stayed pending further order of the court. sm Misc. MoCal 6/5

DATE	PROCEEDINGS
6/6/85	Filed order (SNEED, NELSON, NORRIS) Plaintiff's emergency motion for injunction pending appeal is denied. The temporary stay entered June 5, 1985, has expired. Within 7 days of the entry of this order, the Secretary of the Interior, in conjunction with the intervenors-appellees, shall file with the court a hold harmless agreement that will protect appellants from any consequences resulting from significant restrictions upon subsistence uses by appellants of their lands. See U.S.C. 3120. This panel shall retain jurisdiction of the matter for the purpose of reimposing a temporary stay should the panel disapprove the form and substance of the hold harmless agreement. Upon submission for decision, the merits panel shall determine whether the hold harmless agreement should remain in effect. This appeal is expedited. No prebriefing conference will be held. Appellants shall file their opening brief on or before June 28, 1985. Appellees shall file their answering briefs on or before July 19, 1985. Appellants may file a reply brief within 7 days of the service date of appellee's briefs. No extensions of time will be granted. The Clerk shall calendar this case for oral argument in Seattle in September. sm
6/12/85	Filed aplt's waiver of add'l briefing, request for immediate transfer to merits panel, and request for immediate argument, (6/11), (CIVATT). jw
6/13/85	Filed aple's & Secretary of Interior's Hold Harmless Agreement, (CIVATT). jw
6/17/85	Filed aplt's objection to "Hold Harmless Agreement" (CIVATT) 6/14 -dmf-

DATE	PROCEEDINGS
6/18/85	Rec'd affidavit of Joseph G. Jorgensen in support of aplts' objection to "Hold Harmless Agreement." (CIVATT) -dmf-
6/18/85	Filed federal aplees' opposition to aplts' request for immediate transfer to merits panel and request for immediate payment. (CIVATT) 6/17 -dmf-
6/19/85	File intervenor-aplees' response to aplts' objection to "Hold Harmless Agreement." (CIVATT) 6/18 -dmf-
6/20/85	Rec'd affidavit of Charles C. Hughes, Phd., in support of objection to "Hold Harmless Agreement." (CIVATT) -dmf-
6/21/85	Filed feder aple's response to aplt's objection to hold harmless agreement, (6/20/85), (CIVATT). jw
6/21/85	Filed order (SNEED, NELSON, NORRIS) The panel has reviewed the hold harmless agreement submitted on June 13, 1985, by the Secretary of the Interior, in conjunction with the intervenor-appellees, in compliance with this court's June 6, 1985 order. The panel has concluded that, with two exceptions, the hold harmless agreement is adequate to protect appellants' interests at this stage of the proceedings. The panel that decides this appeal on its merits may review the agreement to determine its continued adequacy. This panel makes the following two changes in the agreement: (1) Paragraph 4 is amended to provide that appellants have the initial burden to establish only that a significant restriction upon subsistence uses has been proximately caused by exploratory drilling or related operations of intervenors-appellees. Once ap-

DATE	PROCEEDINGS
	pellants have established the existence of a subsistence restriction, the burden shall shift to intervenors-appellees to establish that the responsibility lies with a particular company or companies. If intervenors-appellees are unable to do so, then all companies conducting operations in the relevant lease area of the type that caused the restriction shall be jointly and severally liable for damages to appellants. (2) Paragraph 7 is amended to provide that the hold harmless agreement shall remain in effect until further order of this court. Appellants' waiver of additional briefing, request for immediate transfer to merits panel, and request for immediate argument are denied. The parties shall abide by the briefing schedule established in the June 6, 1985 order. sm
7/1/85	Filed as of June 28, orig & 15 Aplt's opening briefs and 5 excerpts of record in 2 volumes. (38 pages). 6/27 tu
7/9/85	Filed, as of Jul 5, intervenor-aplees' (Arco Alaska & Exxon) petition for clarification or reconsideration of order dated 6/21/85. (CIVATT) 7/5 -dmf-
7/22/85	Filed order (NELSON, NORRIS) The motion by intervenor-appellees for clarification or reconsideration of this court's order of June 21, 1985, is granted in part. Paragraph 7 of the hold harmless agreement remains intact in all respects except as to the time for termination of the agreements. As directed in the June 21 order, paragraph 7 is amended to provide that the hold harmless agreement shall remain in effect until further order of this court. In all other respects, the motion for clarification or reconsideration is denied without prejudice to

DATE	PROCEEDINGS
	renewal of the motion before the panel that considers this case on its merits. sm
7/23/85	Filed as of 7/22, orig and 15 copies of aple's (FEDERAL) brief, (50 pgs), 7/19. (PANEL).
7/23/85	Filed as of 7/22, orig and 15 copies of aple's (AMOCO PRODUCTION) brief and 5 copies of aple's supplemental excerpts of record, (in 2 volumes), (49 pgs), 7/19, (PANEL). jw
7/25/85	Filed motion (City of St. Paul) for leave to file amicus brief/memorandum in opposition. (panel) 7/23 -dmf-
7/30/85	Filed 5 copies of aplt's corrected excerpts, vol. 1 jw (DO NOT USE EXCERPTS VOL. JUNE 28, 1985)
8/1/85	Rec'd as of 7/31, orig and 15 copies of aplt's reply brief, (32 pgs), (7/30, (PANEL).
8/5/85	Filed order (DEPUTY CLERK) The City of St. Paul's motion to file an amicus brief/memorandum in opposition to appellants' motion for preliminary injunction is GRANTED. sm
8/23/85	Filed aplee's motion fixing the expiration date of the hold harmless agreement. (panel) 8/22 -dmf-
8/28/85	Filed "Stipulation" that the Hold Harmless Agreement filed by federal defendants and intervenors appellees, Amoco Production, et al will terminate to (panel). jr 8/26/ & 27/85
9/4/85	CAUSE ARGUED & SUBMITTED TO: PREGERSON, ALARCON, CJJ, DIMMICK (W. WASH.), DJ. -dmf-
10/25/85	ORDERED OPINION (ALARCON) FILED AND JUDGMENT TO BE FILED AND ENTD.

DATE	PROCEEDINGS
10/25/85	FILED OPINION – REVERSED AND REMANDED. jw (Judge Dimmick Dissenting)
10/25/85	FILED AND ENTERED JUDGMENT. jw
11/7/85	Filed stipulated motion for limited stay of the mandate (PANEL) sm
12/3/85	Rec'd, as of 11/29/85, intervenor/aples letter dated 11/27/85 re: stipulated motion for limited stay of mandate, etc to (panel). jr
12/26/85	Filed order (Pregerson, Alarcon & Dimmick) the stipulated motion for limited stay of mandate filed 11/7/85 is dismissed as moot. The mandate in the above-entitled case shall be filed forthwith.
12/26/85	Mandate Issued

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. N 83-03-Civil

THE PEOPLE OF THE VILLAGE OF GAMBELL, AN ALASKAN NATIVE IRA ASSOCIATION, AND THE PEOPLE OF THE VILLAGE OF STEBBINS, AN ALASKAN NATIVE IRA ASSOCIATION, PLAINTIFFS,

v.

JAMES S. WATT, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS.

COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

INTRODUCTION

1. This action seeks to enjoin the Secretary of the Interior, James S. Watt, from holding Outer Continental Shelf Lease Sale 57. That lease sale will offer oil and gas companies about 2.4 million acres of Outer Continental Shelf land. The OCS land is located in Norton Sound. The lease sale is scheduled for March 15, 1983.

2. The complaint sets out two alternative legal theories why Secretary Watt should be enjoined from holding the sale. Both theories are based on the subsistence rights of Natives living in the Norton Sound region. The first theory is that Mr. Watt did not follow the procedures required by Section 810 of the Alaska National Interest Lands Conservation Act. This section provides a detailed set of procedures that must be followed before Secretary Watt leases public lands.

3. The second legal theory is based on the Alaska Native Claims Settlement Act. ANCSA terminated certain Native hunting and fishing rights. The language of ANCSA, and the historical connection binding it to Section 810 of ANILCA, establish that the rights extinguished by ANCSA are the same rights protected by Section 810. If Section 810 does not apply to OCS land, ANCSA does not apply. In this case, the Natives retain aboriginal claims to the OCS land, which must be adjudicated before any lease sale can take place.

PARTIES

4. Plaintiff Native Village of Gambell and Plaintiff Native Village of Stebbins are Indian tribes or bands organized under the Indian Reorganization Act. 28 USC § 461 *et. seq.* The governing bodies of these villages are recognized by the Secretary of the Interior. The Native village of Gambell is located on St. Lawrence Island. The Native village of Stebbins is located on the Southern shore of Norton Sound on Cape Stephens.

5. Defendant James S. Watt is the Secretary of the Interior. He officially resides in the District of Columbia. The Department of the Interior is the federal agency responsible for Lease Sale 57.

JURISDICTION AND VENUE

6. This action arises under the Constitution, laws, and treaties of the United States. It involves claims in excess of $10,000. Jurisdiction is based on 28 USC § 1331; 28 USC § 1332; 28 USC § 1337; 28 USC § 1346; and 28 USC § 1362. Venue properly lies in the District Court of Alaska under 28 USC § 1391(b); 28 USC § 1391(e)(2); and 28 USC § 1391(e)(3).

STATEMENT OF THE CASE

7. The Bureau of Land Management published a Notice of Sale for Outer Continental Shelf Lease Sale 57 on February 10, 1983. The notice announces that 418 blocks of land will be offered for oil and gas lease. The blocks consist of 2.4 million acres of Outer Continental Shelf land located off the Alaskan coast. The lease sale is scheduled for March 15, 1983. It will permit successful bidders to explore for, develop, and produce oil and gas.

8. The lease sale and the resulting oil development will injure the subsistence economy of the Norton Sound region. The subsistence economy is the process by which Natives harvest local fish and game and then directly consume it, exchange it on local trade networks, or sell it for cash. The subsistence economy is essential for the continued existence of Natives living in the Norton Sound basin. For example, over ninety percent of the diet of villagers living in Gambell consists of locally-harvested walrus and other marine mammals, and the remainder of the diet is largely composed of other subsistence animals.

9. Oil and gas development will harm the subsistence economy in two ways. It will reduce the animal populations forming the basis of the subsistence economy. And it will decrease the Natives' ability to purchase equipment needed to harvest the resource. These two effects will diminish the output of the subsistence economy, threatening the existence of Native villagers.

10. Secretary Watt has not followed the procedures outlined in Section 810 of the Alaska National Interest Lands Conservation Act in preparing the Norton Sound lease sale. Section 810 is designed to protect the subsistence economy which supports Alaskan Natives. It requires the Secretary to make certain findings and to effectuate certain procedures before leasing or disposing of public lands.

11. Members of the Plaintiff organizations, and their lineal ancestors, have used and occupied substantial portions of the lands to be conveyed in the Norton Sound lease sale. The Plaintiffs claim traditional hunting and fishing rights. These rights include the right to hunt seal, walrus, and whale, and the right to fish for herring and salmon.

12. The tribal councils of the Plaintiff villages have not consented to the leases affecting the land owned, used, or occupied by them.

First Cause of Action

13. Secretary Watt has not followed the procedures or made the findings required by Section 810 of the Alaska National Interest Lands Conservation Act. This failure injures the Plaintiffs' interest.

Second Cause of Action

14. Secretary Watt intends to lease lands encumbered by Native claims. The lease would injure the plaintiffs' possessory interest, and would violate the trust responsibilities Secretary Watt owes to the Alaskan Natives.

RELIEF

The plaintiffs request the following relief:

1. That this court issue a preliminary injunction enjoining Secretary Watt from leasing the Norton Sound basin until such time as:

a. He makes the findings and determinations required by Section 810 of ANILCA or, alternatively;

b. This court adjudicates Native claims to the Norton Sound basin.

2. That Secretary Watt and his subordinates be permanently enjoined from leasing the Norton Sound basin.

3. That the plaintiffs be awarded costs and attorneys fees.

Respectfully submitted,

ALASKA LEGAL SERVICES CORPORATION

by: /s/ DONALD COOPER

Donald Cooper
Bruce Horowitz
Joan Lee
Robert Hickerson
Heather Noble
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. 985-201 CIV

THE PEOPLE OF THE VILLAGE OF GAMBELL, AN ALASKAN NATIVE IRA ASSOCIATION, AND NUNAM KITLUSISTI, A NATIVE INTERTRIBAL ORGANIZATION, PLAINTIFFS,

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs in this action, the Native Village of Gambell and Nunam Kitlusisti, seek to permanently enjoin all activities resulting from Federal Oil and Gas Lease Sale 83 for the Navarin Basin, Alaska. Plaintiffs also seek an Order declaring Sale 83 to be invalid and any leases resulting from that sale to be null and void.

2. Plaintiffs raise two arguments in support of their claim that Sale 83 is invalid. First, the Secretary of the Interior failed to comply with the requirements of section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3120, in selecting the areas offered in Sale 83. The second argument is that Title VIII and section 810 of ANILCA impose a trust responsibility on the Secretary to minimize the impact of oil and gas leasing, exploration, and development on Native subsistence activities. By leasing lands of low or marginal oil and gas potential, the Secretary breached this trust responsibility.

3. Plaintiffs seek to invalidate Sale 83 and leases resulting from that sale in order to protect their subsistence hunting and fishing rights. In holding Sale 83, the Secretary of the Interior ignored congressional directives that he lease in a manner that caused the least adverse impact on subsistence. Oil exploration and development activities on the leased tracts present an unreasonable threat of injury to primary subsistence resources needed by residents of St. Lawrence Island and western Alaska.

PARTIES

4. Plaintiff Native Village of Gambell is an Indian tribe or band reorganized under the Indian Reorganization Act as amended, 25 U.S.C. § 461 *et seq.*. The governing body of this village is recognized by the Secretary of the Interior. The Native Village of Gambell is located on St. Lawrence Island in the Bering Sea.

5. Plaintiff Nunam Kitlusisti is a non-profit corporation organized under the laws of the State of Alaska. It represents subsistence users throughout the Yukon-Kuskokwim Delta of southwest Alaska, working on resource development and environmental issues which affect their subsistence way of life. Nunam Kitlusisti is governed by a Board of Directors nominated by constituent Yukon-Kuskokwim villages. Its offices are located in Bethel, Alaska.

6. Defendant Donald P. Hodel is the Secretary of the Interior. He is the official successor to William P. Clark, who was Secretary of the Interior at the time Lease Sale 83 was held. Secretary Hodel is responsible for administering the Outer Continental Shelf leasing program established pursuant to the Outer Continental Shelf Lands Act as amended, 43 U.S.C. § 1331 *et. seq.*. Defendant Donald P. Hodel officially resides in Washington, D.C.

JURISDICTION AND VENUE

7. This action arises under the Constitution, laws, and treaties of the United States. Jurisdiction is proper under 28 U.S.C. § 1331; 28 U.S.C. § 1337; 28 U.S.C. § 1346; 28 U.S.C. § 1362; and 16 U.S.C. § 3120. Venue properly lies in the District Court for the District of Alaska under 28 U.S.C. § 1391(b), (c), and (e).

STATEMENT OF THE CASE

8. On March 16, 1984, the Secretary of the Interior published notice of his intent to sell some 3,700 blocks in the Navarin Basin southwest of St. Matthew Island in the Bering Sea. 49 Fed. Reg. 10,058 (March 16, 1984). The sale was held on April 16, 1984. As a result of this sale, some 185 leases were issued to successful bidders.

9. The Navarin Basin is home to many primary subsistence resources consumed by residents of Gambell and the coastal villages of the Yukon-Kuskokwim Delta region. Among other things, it is the winter feeding ground of the bowhead whale, an endangered species central to the subsistence culture of the people of Gambell. The migration routes of various species of marine mammals, fish, and migratory birds traverse the Navarin Basin area. These marine mammals, fish, and migratory birds provide more than 80% of the food consumed by residents of Gambell and villages in the Yukon-Kuskokwim region.

10. Oil and gas exploration and development in the Navarin Basin will harm the subsistence economies of Gambell and the villages of the Yukon-Kuskokwim Delta region. The subsistence economy is the process by which Alaskan Natives harvest local fish and game and then directly consume it, exchange it on local trade networks, or sell it for cash. For the people of Gambell and the villages of the Yukon-Kuskokwim Delta region, the subsistence economy is essential for their survival.

11. Oil and gas exploration and development will harm the subsistence economies of the affected villages in a number of ways. For example, oilspills will directly injure marine mammals, fish, and migratory birds needed for subsistence; noise from exploration and development activities will cause subsistence resources to alter their traditional migration patterns, thereby reducing their availability for subsistence users; and inflation caused by oil and gas activity will decrease Natives' ability to purchase equipment needed to harvest subsistence resources.

12. The Secretary of the Interior did not follow the requirements of section 810 of the Alaska National Interest Lands Conservation Act in preparing for Lease Sale 83. Section 810 is designed to protect rural Alaskan Natives' opportunity to pursue their customary and traditional subsistence way of life.

13. In the context of OCS leasing, section 810 of ANILCA requires the Secretary to:

(a) perform detailed subsistence impact studies;
(b) select areas to be leased in a manner that minimizes the conflict between oil and gas and subsistence; and
(c) determine whether leasing any of the offered areas may significantly restrict subsistence uses or resources, and if it may, the Secretary must:
    (1) give notice and hold hearings in the affected areas,
    (2) consult with local fish and game advisory committees, and
    (3) make specific detailed findings regarding the impact of the proposed lease sale on subsistence uses and resources.

14. Title VIII of ANILCA was passed for the benefit of Alaskan Natives. It imposes a trust responsibility on the Secretary to manage lands, including the OCS, in a manner that will cause the least adverse impact on Native subsistence users and resouces.

FIRST CAUSE OF ACTION

15. The Secretary of the Interior did not comply with section 810 of ANILCA in determining to offer the 3,700 blocks for lease in the Navarin Basin. As such, the sale was unlawful, and the leases resulting from that sale are invalid.

SECOND CAUSE OF ACTION

16. By failing to comply with the section 810 requirement that he select blocks in a manner designed to minimize the conflict between oil and gas activities and subsistence, the Secretary breached his trust obligation to ensure that oil and gas activities cause the least adverse impact on subsistence uses and resources.

PRAYER FOR RELIEF

17. Plaintiffs request the following relief:

(a) That this court enter an Order enjoining the Secretary from authorizing, permitting, or otherwise allowing any lessee from conducting any exploration or development activities on their Sale 83 lease(s);

(b) That this court enter an Order declaring Sale 57 to be null and void and any leases resulting therefrom to be equally invalid;

(c) That this court enter an Order awarding plaintiffs their costs and reasonable attorneys fees; and;

(d) That this court grant plaintiffs such other relief as would be just and equitable.

Respectfully submitted this 25th day of April, 1985.

ALASKA LEGAL SERVICES CORPORATION

/s/ JAMES A. BAMBERGER

James A. Bamberger
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. N83-003-Civil

THE PEOPLE OF THE VILLAGE OF GAMBELL, AN ALASKAN NATIVE IRA ASSOCIATION, AND THE PEOPLE OF THE VILLAGE OF STEBBINS, AN ALASKAN NATIVE IRA ASSOCIATION, PLAINTIFFS,

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS.

ARCO ALASKA, INC., *et al.*, DEFENDANT-INTERVENORS.

AFFIDAVIT OF EARL D. STOUT
EXHIBIT E

AFFIDAVIT OF EARL D. STOUT

THE STATE OF TEXAS
COUNTY OF HARRIS

The undersigned affiant, Earl D. Stout, personally appeared before me, Charles Raymond LeMay, Notary Public in and for the County of Harris, state of Texas, on this 17th day of April 1985, and deposes and states to the best of his information and belief:

1.

I am the Manager of the Alaska/Pacific Exploration Division of Exxon Company, U.S.A., a division of Exxon Corporation. In this capacity, I supervise all of Exxon's offshore exploration programs in Alaska and the Pacific, including the area covered by Sale 57 in the Norton Sound.

I have held this position since the spring of 1982, and am thus intimately familiar with Exxon's Norton Sound activities since the inception of this lawsuit.

2.

Exxon acquired 41 leases at Sale 57, in March of 1983, at a cost in excess of $258,000,000. Geological and geophysical costs and lease rentals raise the net bonus cost of acquisition by in excess of $12,400,000.

3.

During the summer of 1983, Exxon engaged in site clearance, a type of seismic activity, of roughly ten blocks on which it considered, at that time, that exploratory drilling might possibly occur during the 1984 exploration season. During the summer of 1984, Exxon continued its Norton exploration by drilling two exploratory wells, at a cost of approximately $16,000,000, on its Sale 57 leases. Exxon also conducted a seismic program on its Norton leases during the 1984 open water season. Exxon conducted all of this exploration in complete compliance with all applicable laws and regulations governing OCS activities, under plans and permits approved by the agencies responsible for implementing the statutory scheme. To the best of my knowledge and belief, no adverse effects whatsoever, whether environmental or economic, have resulted from any of the industry activity, nor has any party complained of any such adverse effects as a result of exploratory activities since the sale occurred in 1983.

4.

During the 1985 drilling season, Exxon plans to drill two additional wells on its Norton leases. Both well locations are in the St. Michael Protraction Area; one is on Block 54

and the other on Block 361. According to the Environmental Impact Statement for Sale 57 and the draft for the upcoming Sale 100, neither of these blocks is located in an area of particular environmental sensitivity. Both blocks are at least 24 miles from shore.

5.

Exxon plans to begin drilling the first of these wells on or near June 1. Commencement of the second is currently planned for mid to late July. Present estimates require a minimum of 45 days to drill each well, with further time required for testing should hydrocarbons be encountered. Time is of the essence due to the limited drilling window available in Alaska; because of the seasonal and climatic operating conditions in the Norton Sound, any delay will preclude the drilling of the second well. Inability to proceed to the drilling of the second well during the 1985 season as currently scheduled may, because of lost efficiencies related to timing, render the drilling of the second well at a later date uneconomic. Such inability to expeditiously evaluate the vital national resource reserves potentially underlying these Norton leases will cause enormous waste not only to Exxon as a company, but to the public at large as well.

6.

Exxon's Plan of Exploration (POE) and accompanying Environmental Report for its Sale 57 leases received the approval of the Minerals Management Service (MMS) on December 28, 1983. The state of Alaska approved Exxon's certification that all activities conducted under the POE would be conducted consistently with the Alaska Coastal Management Program on April 25, 1984. Applications for Permits to Drill (APDs) the two wells planned for the 1985 season were filed with the MMS on February 21 and March 20, 1985 pursuant to 30 C.F.R. § 250.36. Approval

of the APDs is expected in the next few weeks. Publication of the final National Pollutant Discharge Elimination System (NPDES) Permit for the Norton Sound area is expected imminently. Issuance of this permit and approval of the Applications for Permit to Drill are the sole remaining regulatory procedures required prior to Exxon's spudding of the first well planned.

7.

The only seismic activity planned relative to exploration of Exxon's Sale 57 leases consist of site clearance of three blocks preparatory to the drilling of the two exploratory wells described above. This seismic work is necessary to clear the area of any potential sea floor instabilities and to ensure safe operating conditions on the lease block in question. Bottom coring "shallow" geologic surveys and the "high resolution" seismic programs which use a small energy source are required pursuant to the OCS Orders governing operations on the Alaska OCS. (Alaska OCS Region, OCS Order 2.1.3.) "High resolution" seismic programs, with their small energy source, have a far more limited range than the "deep seismic" surveys which companies typically perform prior to a lease sale to determine the presence of potential hydrocarbon-bearing structures.[1]

8.

Should drilling be delayed, and as a function of any delay, Exxon will face losses which now approximate $4,000,000, and which will rise to nearly $10,000,000 by May 30, 1985, from existing contract commitments alone.

---

[1] Exxon (as well as other companies) may also conduct deeper seismic in the Norton area in preparation for OCS Sale 100. These operations are not related to Exxon's current exploration of its Sale 57 tracts.

Upon departure of the drilling rig from Seward, currently scheduled for May 23, Exxon's exposure, in the event of any delay, will escalate dramatically by at least $2,275,000. These cancellation and damages costs will be in addition to the even larger, and potentially immeasurable, losses that Exxon will suffer if unable to evaluate the oil and gas potential of its already enormous investment, in the form of lease bonuses, rental payments, 1984 drilling costs, geological and geophysical expenditures, and the time value of money associated with all of the above, in its Norton Sound leases.

9.

For all of the above reasons, since any delay caused by issuance of a preliminary injunction will result in enormous and irreparable damage, Exxon should be allowed to proceed, as scheduled and without delay, in its 1985 exploration of its Sale 57 leases in Norton Sound.

/s/ EARL D. STOUT,
Earl D. Stout, Affiant

SUBSCRIBED TO AND SWORN BEFORE ME THIS 17TH DAY OF APRIL 1985, AT HOUSTON, HARRIS COUNTY, TEXAS.

/s/ CHARLES RAYMOND LEMAY
Notary Public, State of Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. A85-184-Civil

THE PEOPLE OF THE VILLAGE OF GAMBELL, AN ALASKAN NATIVE IRA ASSOCIATION, AND THE PEOPLE OF THE VILLAGE OF STEBBINS, AN ALASKAN NATIVE IRA ASSOCIATION, PLAINTIFFS,

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS.

ARCO ALASKA, INC., *et al.*, INTERVENOR-DEFENDANTS.

AFFIDAVIT OF HUGH P. BUSHNELL

AFFIDAVIT OF HUGH P. BUSHNELL

THE STATE OF TEXAS
COUNTY OF HARRIS

The undersigned affiant, Hugh P. Bushnell, personally appeared before me, Vicky Jackson, Notary Public in and for the County of Harris, state of Texas, on this 30th day of April 1985, and deposes and states to the best of his information and belief:

1.

I am the Operations Manager of the Alaska/Pacific Exploration Division of Exxon Company, U.S.A., a division of Exxon Corporation. In this capacity, I supervise all of Exxon's offshore exploration operations in Alaska and the Pacific, including the area covered by Sale 57 in the Norton Sound. I have held positions within the Alaska/Pacific

Division since the summer of 1978, and am thus intimately familiar with Exxon's Norton Sound activities since the inception of this lawsuit.

2.

Exxon acquired 41 leases at Sale 57, in March of 1983, at a cost in excess of $258,000,000. Geological and geophysical costs and lease rentals raise the net bonus cost of acquisition by in excess of $12,4000,000.

3.

During the summer of 1983, Exxon engaged in site clearance, a type of seismic activity, of roughly ten blocks on which it considered, at that time, that exploratory drilling might possibly occur during the 1984 exploration season. During the summer of 1984, Exxon continued its Norton exploration by drilling two exploratory wells, at a cost of approximately $16,000,000, on its Sale 57 leases. Exxon also conducted a seismic program on its Norton leases during the 1984 open water season. Exxon conducted all of this exploration in complete compliance with all applicable laws and regulations governing OCS activities, under plans and permits approved by the agencies responsible for implementing the statutory scheme. To the best of my knowledge and belief, no adverse effects whatsoever, whether environmental or economic, have resulted from any of the industry activity, nor has any party complained of any such adverse effects as a result of exploratory activities since the sale occurred in 1983.

4.

During the 1985 drilling season, Exxon plans to drill two additional wells on its Norton leases. Both well locations are in the St. Michael Protraction Area; one is on Block 54

and the other on Block 361. According to the Environmental Impact Statement for Sale 57 and the draft for the upcoming Sale 100, neither of these blocks is located in an area of particular environmental sensitivity. Both blocks are at least 24 miles from shore.

5.

Exxon had originally planned to begin drilling the first of these wells on or near June 1, with the second planned for mid to late July. An unusually harsh Alaska winter, resulting in a later than normal ice break-up in the Norton Sound, has pushed the projected spud date for the first Norton well to mid-June and that of the second well to late July or early August. Estimates require a minimum of forty-five (45) days to drill each well, with further time required for testing should hydrocarbons be encountered. As this year's ice conditions demonstrate, time is of the essence in scheduling exploratory activities in Alaska. Seasonal and climatic operating conditions result in an already naturally limited drilling window. Any further delay will preclude the drilling of the second well. Inability to proceed to the drilling of the second well during the 1985 season as currently scheduled may, because of lost efficiencies related to timing, render the drilling of the second well in another season uneconomic. Such inability to expeditiously evaluate the vital natural resource reserves potentially underlying these Norton leases will cause enormous waste not only to Exxon as a company but to the public at large as well.

6.

Should drilling be further delayed, and as a function of any delay, Exxon faces losses which now approximate $4,210,000, and which will rise to nearly $10,000,000 by mid-June, from outstanding contract commitments alone. Upon departure of the drilling rig from Seward, Exxon's

exposure, in the event of further delay, will escalate dramatically by at least $2,275,000. This departure date, originally scheduled for May 16, has already been delayed until early June, as outlined above, due to the delay in commencement of the Norton open water season. These cancellation and damage costs will be in addition to the even larger losses that Exxon will suffer if unable to evaluate the oil and gas potential of its already enormous investment, in the form of lease bonuses, rental payments, 1984 drilling costs, geological and geophysical expenditures, and the time value of money associated with all of the above, in its Norton Sound leases.

7.

Each day that Exxon endures the uncertainty associated with the pending preliminary injunction motion entails ever increasing losses resulting from the perpetuation of existing commitments. Exposure due to these commitments could be significantly minimized, were the court to issue its decision on the pending motion expeditiously. Savings to Exxon which would result from an expedited decision approach $21,000 on a per diem basis. Conversely, with each day of uncertainty and delay, Exxon invests yet another $21,000 in its Norton Sound leases.

8.

For all of the above reasons and in the interest of economy, efficiency, and equity, Exxon requests that an expedited decision be issued in the case.

/s/ HUGH P. BUSHNELL,
Hugh P. Bushnell, Affiant

SUBSCRIBED TO AND SWORN BEFORE ME THIS 30TH DAY OF APRIL 1985, AT HOUSTON, HARRIS COUNTY, TEXAS.

/s/ VICKY JACKSON
Notary Public, State of Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. A85-201 Civil

THE PEOPLE OF THE VILLAGE OF GAMBELL, AN ALASKAN NATIVE IRA ASSOCIATION, AND NUNAM KITLUTSISTI, A NATIVE INTERTRIBAL ORGANIZATION, PLAINTIFFS,

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS.

AMOCO PRODUCTION COMPANY, ET AL., INTERVENOR-DEFENDANTS.

AFFIDAVIT OF EARL D. STOUT
EXHIBIT A

AFFIDAVIT OF EARL D. STOUT

The State of Texas
County of Harris

The undersigned affiant, Earl D. Stout, personally appeared before me, Charles Raymond LeMay, Notary Public in and for the County of Harris, state of Texas, on this 8th day of May 1985, and deposes and states to the best of his information and belief:

1.

I am the Manager of the Alaska/Pacific Exploration Division of Exxon Company, U.S.A., a division of Exxon Corporation. In this capacity, I supervise all of Exxon's

petroleum exploration programs for onshore and offshore Alaska including the area covered by Outer Continental Shelf (OCS) Lease Sale 83—Navarin Basin. I have held this position since the spring of 1982 and am thus intimately familiar with Exxon's participation in Sale 83 and its planned exploration activities in the Navarin Basin.

2.

I participated in and actually supervised the bidding process employed by Exxon's Alaska/Pacific Division in connection with Sale 83. As a result of Exxon's efforts, it was awarded 61 leases at Sale 83, which was held on April 27, 1984, for a net bonus and rentals cost in excess of $167,000,000. Exxon's pre-lease sale costs (geological and geophysical data acquisition and processing, overhead, research, and evaluation) associated with Sale 83 make Exxon's total net acquisition cost approximately $208,000,000.

3.

Immediately following Sale 83, Exxon initiated preparatory activities necessary to allow it to permit exploratory drilling in the 1985 drilling season. During the summer of 1984, Exxon conducted site clearance activities, a type of shallow seismic survey, over two geologic prospects (roughly 14 lease blocks) in the Navarin Basin on which Exxon was considering exploratory drilling during the 1985 exploration season. These site clearance activities cost Exxon approximately $1,138,000. At the same time, Exxon arranged for preparation of an environmental report and orientation program required by Minerals Management Service (MMS) regulations (30 C.F.R. § 250.34) and a stipulation included in the leases granted to Exxon. To date, Exxon has paid more than $59,000 for the preparation of this program. On November 21, 1984,

Exxon submitted its Navarin Basin Plan of Exploration (POE), Environmental Report, and emergency response plans to the MMS in Anchorage.

4.

I am informed that following Exxon's submission of its POE on November 21, 1984, the MMS, on November 28, 1984, deemed Exxon's POE completed and forwarded it to the state of Alaska and other federal agencies for review. I am further informed that the MMS notified local communities, individuals, and groups who have previously expressed an interest in reviewing and commenting on exploration plans for the Navarin Basin, including Nunam Kitlusisti, of the submission of Exxon's POE. On December 28, 1984, the MMS, after preparing an Environmental Assessment which included an evaluation under Section 810 of ANILCA, approved Exxon's POE within the thirty (30)-day review period proscribed by the Outer Continental Shelf Lands Act, as amended, (OCSLA). Subsequently, on January 14, 1985, the state of Alaska after considering comments by Nunam Kitlusisti, the cities of St. Paul and Nome, and the Bering Straits Coastal Resource Service Area Board concurred in Exxon's finding that the proposed activities are consistent with the Alaska Coastal Management Program (ACMP) which specifically includes consideration of subsistence uses.

5.

Upon receipt of MMS's approval of Exxon's POE, Exxon proceeded to implement its 1985 Navarin Basin drilling program. This program includes an initial well on Exxon's Redwood Prospect (OCS-Y 0559) with contingency plans to drill a second well on this prospect (OCS-Y 0592) depending on the results of the inital well. Exxon is

planning to commence its first well on or about June 4, 1985. To accomplish this drilling program, Exxon has had to commit to contracts for, among other things, the construction of a supply base on St. Paul Island, a support barge, helicopters, supply boats, and a drilling vessel. Exxon estimates that if its 1985 Navarin drilling program is enjoined by the Court, it will cost Exxon approximately $20,450,000 as of April 29, 1985, and that these costs will continue to escalate until June 4, 1985 when Exxon will be obligated to pay a total of approximately $23,250,000 in either cancellation or operating charges even though Exxon is precluded from commencing its operations. In the event, Exxon's 1985 drilling operations are delayed rather than cancelled, it will still incur operating charges of approximately $123,000 per day of delay. Any such delay also increases the possibility that Exxon's drilling program will be conducted during inclement weather and that the cost of this drilling program will dramatically escalate. In addition to Exxon's own drilling program, we are also negotiating to participate in up to three additional 1985 Navarin Basin wells to be drilled and operated by two other oil companies. Exxon assumes these other companies will incur similar cancellation or operating charges if their 1985 Navarin Basin drilling programs are cancelled or delayed as a result of the injunction sought by the Village of Gambell and Nunam Kitlusisti.

6.

Exxon is also planning to conduct site clearance activities over three Navarin Basin geologic prospects (roughly 32 lease blocks) during the summer of 1985. Exxon anticipates that these shallow seismic activities will commence in June. Exxon is currently obligated to pay its seismic contractor's mobilization and demobilization costs

($220,000) plus a minimum contract payment equal to sixty (60) days of operations (approximately $1,133,000) for a total minimum contract cost of about $1,353,000.[1]

7.

In addition to these cancellation or operating charges, Exxon and the other oil companies planning to drill in the Navarin Basin in 1985 will effectively be deprived of a year of their ten-year oil and gas leases. Equally important, the cancellation of these 1985 Navarin Basin drilling programs will impede the national interest in the expeditious exploration of a very prospective frontier oil and gas basin.

8.

Exxon has received, to date, all of the state and federal approvals required to commence its 1985 drilling program with the exception of the final permit to drill. Exxon submitted its application for this permit to drill on March 26, 1985. Exxon will be submitting supplementary materials requested by the MMS in the next few days. Once these materials are received, it is my understanding that any delay in the issuance of this permit will be due solely to this suit.

For all of the above reasons and since any delay caused by issuance of a preliminary injunction will result in enormous and irreparable damage both to Exxon and the na-

---

[1] Exxon is also planning to conduct a deep seismic survey in the Navarin Basin in preparation for OCS Sale 107, which is scheduled for September 1986. This deep seismic survey is not related to Exxon's current exploration of its Sale 83 tracts.

tional interest, Exxon should be allowed to proceed, as scheduled and without delay, with its 1985 exploration drilling program for its Sale 83—Navarin Basin leases.

/s/ EARL D. STOUT,
Earl D. Stout, Affiant

SUBSCRIBED TO AND SWORN BEFORE ME THIS 8TH DAY OF MAY 1985, AT HOUSTON, HARRIS COUNTY, TEXAS.

/s/ CHARLES RAYMOND LEMAY
Notary Public, State of Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. A85-201 Civil

THE PEOPLE OF THE VILLAGE OF GAMBELL, AN ALASKAN NATIVE IRA ASSOCIATION, AND NUNAM KITLUTSISTI, A NATIVE INTERTRIBAL ORGANIZATION, PLAINTIFFS,

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS.

AMOCO PRODUCTION COMPANY, ET AL., INTERVENOR-DEFENDANTS.

AFFIDAVIT OF DANA B. GRANNELL
EXHIBIT B

AFFIDAVIT OF DANA B. GRANNELL

State of Alaska) ss.
Third Judicial District)

Dana B. Grannell, being first duly sworn, deposes and states to the best of his knowledge and belief that:

1. I am the South Alaska Regional Exploration Manager and acting Executive Vice President for Exploration Operations, ARCO Alaska, Inc. (ARCO). I am responsible for ARCO exploration decisions in Alaska and supervise exploration activities both onshore and offshore Alaska. Consequently, I am familiar with all of ARCO's activities relative to the Navarin Basin OCS Lease Sale 83 (Lease Sale 83) conducted on April 17, 1984.

2. ARCO acquired all or part of thirty (30) lease tracts at Lease Sale 83 at a cost to ARCO in excess of $61,600,000 (including first year rentals). Geological and geophysical costs incurred in preparation for the Sale were in excess of $17,000,000. These costs include seismic work done in the Basin and ARCO's share of a COST well drilled in the Lease Sale 83 area which was operated by ARCO.

3. During the summer of 1984 ARCO incurred additional expenses in performing site clearance work for two of its drilling prospects in the Lease Sale 83 area. This activity is in the nature of seismic work and represented an expenditure of just over $600,000. Such site clearance is a necessary prerequisite to drilling.

4. The lease purchase and associated activities described above represent an investment in excess of $79,000,000 in the Navarin Basin and includes considerable seismic and drilling experience in the area. As a Navarin operator, ARCO has successfully conducted several types of exploration activities, all of which were brought to conclusion without any indication of environmental, economic or other adverse impact to anyone or any resource. To the best of my knowledge, ARCO has never received a complaint of nor any direct evidence of any adverse effects occasioned by its exploration activities in the Navarin Basin.

5. During the coming summer, ARCO intends to continue its exploration effort in the Lease Sale 83 area. ARCO, as operator for a group of eight companies, is proceeding with plans to drill an exploration well on Block 637, Official Projection Diagram NP1-7. Because of the extreme remoteness of the lease tracts in the Navarin Basin, planning efforts for this well began early. The need to develop extensive logistical support, including the use of specialized transport such as long range helicopters and construction of a remote operations base has dictated that

certain commitments be made as early as last fall. In November 1984 and in January 1985 ARCO committed to contracts for helicopter support and the construction of an aviation support base on St. Paul Island. To date, those decisions represent a sunk cost of almost $2,000,000. Another $300,000 has been spent in the acquisition of permits, telecommunications, wellheads and drilling equipment. These costs would not be recoverable in the event drilling could not proceed.

6. As is the case with the other support requirements, negotiations for the use of a suitable offshore drilling rig commenced last December. Drill rig costs represent a major portion of the total cost of ARCO's well. After several months of effort, ARCO entered into a contract for a drill rig which is currently drilling a well offshore California. ARCO's Navarin plans are to a certain extent tied to the completion of the California well but it is anticipated that well will be completed this month. Upon completion, plans call for immediate mobilization of the drill rig from California to ARCO's Navarin site. Because of the expense of mobilization and the degree of availability of these specialized drill rigs, there is a penalty for termination of the drilling contract. Given the present time estimates and mobilization requirements, if ARCO were prevented at this time from drilling its Navarin well, a termination penalty would be incurred. This penalty could be as high as $1.8 million.

7. ARCO is otherwise fully prepared to proceed with its well. All applicable permits have been acquired or are in final processing. These include authorization to discharge under the National Pollutant Discharge Elimination System and ARCO's Application for Permit to Drill (APD) which is expected to be received shortly. ARCO's Plan of Exploration (POE) was approved by the Minerals Management Service on January 23, 1985 and the consistency determination required by the Alaska Coastal Management Program was received on March 28,

1985. The consistency determination process afforded the local Coastal Management planning agency, Cenaliulriit, the opportunity to review, comment and to make recommendations on ARCO's plan. Only after satisfying the concerns of Cenaliulriit, specifically including issues related to subsistence matters, did the State of Alaska render its consistency determination. It should be noted that the Director of Cenaliulritt, Mr. Harold Sparck, is also the Director of Plaintiff, Nunam Kitlusisiti.

8. Should drilling be delayed, ARCO faces the loss of approximately $4 million in sunk costs. Due to the nature of the drill rig contract additional money must be committed shortly for other support services. The actual timing of these commitments is dependent on the mobilization of the drill rig from California but with the anticipated schedule these will need to be made prior to the end of this month. The cost of all commitments necessary for the well will escalate rapidly with the departure of the drill rig for Alaskan waters. Cancellation costs and associated damages will doubtless exceed significantly the level of the sunk costs described above.

9. ARCO's investment in the Lease Sale 83 area is enormous and any delay in drilling occasioned by issuance of an injunction would represent a devastating loss and irreparable damage to ARCO. Given the nature of frontier exploration and the present state of the oil and gas industry, a lost opportunity in 1985 could lead to a loss of the entire investment. ARCO should be allowed to proceed without delay with its planned Navarin drilling in 1985.

/s/ DANA B. GRANNELL

Dana B. Grannell

SUBSCRIBED TO AND SWORN BEFORE ME THIS 8TH DAY OF MAY 1985, AT ANCHORAGE, ALASKA.

/s/ BARBARA HURLEY

Notary Public in and for Alaska
My Commission Expires: 7/23/88

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. A85-201 Civil

THE PEOPLE OF THE VILLAGE OF GAMBELL, AN ALASKAN NATIVE IRA ASSOCIATION, AND NUNAM KITLUTSISTI, A NATIVE INTERTRIBAL ORGANIZATION, PLAINTIFFS,

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS.

AMOCO PRODUCTION COMPANY, ET AL., INTERVENOR-DEFENDANTS.

AFFIDAVIT OF R. J. CRISWELL
EXHIBIT C

AFFIDAVIT OF R. J. CRISWELL

R. J. CRISWELL, being duly sworn, deposes and states to the best of his knowledge, information, and belief as follows:

1. I am the Western Division Production Manager for Amoco Production Company (Amoco). In this capacity, I manage and direct all of Amoco's offshore exploratory drilling programs with respect to Alaska and the Pacific, including the area covered by OCS Lease Sale 83 (Navarin Basin) in the Bering Sea offshore the state of Alaska.

2. This affidavit describes Amoco's long-standing commitment and preparation activities for its scheduled exploratory drilling program during 1985 in the OCS Lease Sale 83 area. In addition, it discusses the irreparable

harms that could be incurred by Amoco and the public at large with the issuance of an injunction prohibiting the exploratory drilling program which has been in the planning stages for over a year and its imminent implementation.

A. OCS SALE 83 (NAVARIN BASIN) AREA

3. The Navarin Basin lies approximately 300 miles from St. Lawrence Island and 400 miles from the west coast of mainland Alaska in the Bering Sea. The exploratory wells planned for the 1985 drilling season will be located in some of the most remote U.S. OCS waters ever drilled for U.S. oil and gas exploration. Because of weather conditions, ice conditions and the remoteness of the Navarin Basin, the planning, logistics, and required investments for this exploratory operation are significant. In the Navarin Basin ice prohibits exploratory drilling for all but about 7 months a year, 25 knot winds are common in winter, and heavy fog is present during the summer months. Hostile sea conditions most of the year make operating in this area of the U.S. OCS expensive and very demanding.

B. AMOCO'S LEASES IN OCS SALE 83 (NAVARIN BASIN) AREA

4. The U.S. Department of the Interior (DOI) held OCS Sale 83 on April 17, 1984. At the sale Amoco, both individually and jointly with partners, submitted bids on 82 tracts offered for lease. DOI accepted the bids submitted with respect to 47 of the 82 tracts (14 of the 47 successful bids are located in a buffer zone created by DOI as a result of a boundary dispute between the U.S. and the U.S.S.R. These leases have yet to be awarded to Amoco pending final decision by DOI to accept and award the leases.) At the time the 33 non-buffer zone leases were accepted by DOI, Amoco paid the sum of $123,332,900

for lease bonuses. The sum of $45,171,266, represents bonuses which will be paid by Amoco for the remaining 14 buffer zone leases when DOI decides they can be accepted. Therefore, Amoco has committed the net total sum of $168,504,166 for bonuses when DOI ultimately accepts all Amoco leases in the Navarin Basin.

5. Prior to lease sale itself on April 17, 1984, Amoco spent several million dollars acquiring geophysical data, information and in the processing of such data for the Sale 83 area. The monies expended include data and information, but also professional evaluations, interpretations, computer time, drafting, research, management and supervision.

C. AMOCO'S 1985 EXPLORATORY DRILLING PROGRAM FOR OCS SALE 83 (NAVARIN BASIN) AREA

6. Amoco's plans for the 1985 drilling season are to begin the mobilization of equipment starting mid-May 1985 and to spud its first well during the first week of June, 1985. Amoco anticipates drilling between three (3) and four (4) wells during 1985 and an additional 3 wells during 1986 in this area.

All of the required equipment and supplies for this operation has already been contracted for or committed to by Amoco. The following is a summary of the major equipment areas required for the operation. Amoco is contractually committed to this equipment which is currently scheduled to be in the Navarin Basin during early June, 1985. The dollar amounts reflect the minimum monetary obligation incurred by Amoco if an injunction was entered prohibiting activity and equipment has to be demobilized or returned without being used during the short drilling season.

A. *Drilling Rigs*—$10,500,000

Amoco will operate two semi-submersible drilling rigs during the 1985 drilling season, the Odeco Ocean Odyssey and the Sedco 708. Current plans are for both rigs to be mobilized to the Navarin during early June, 1985. The dollar amount indicated represents Amoco's financial commitment pursuant to the contracts if the rigs are not mobilized to the Navarin Basin.

B. *Marine Support*—$12,000,000

A fleet of vessels will be required to support the two Amoco operated drilling rigs. A 63,000 DWT bulkcarrier is being modified to function as an offshore warehouse (wareship) and will be mobilized to the Navarin Basin area by June 1. Diesel fuel and water have been loaded on a 47,000 DWT product tanker which is also enroute to the Navarin Basin area and is expected to arrive by June 1.

Four supply boats are either currently enroute to the Navarin Basin area or will soon be enroute from areas around the world. Two additional boats, which will stand-by near each rig, are currently being fitted with oil spill and rescue equipment in Dutch Harbor, Alaska. All vessels are either presently under contract or committed to by Amoco. The dollar amount shown reflects Amoco's financial responsibility in the event that the program is cancelled on or before June 1, 1985.

C. *Air Support*—$9,509,000

Two Boeing BV-234 Chinook helicopters are under contract to support industry drilling operations in the Navarin this drilling season. A helibase has also been constructed on St. Paul Island, which will be the origin for all helicopter flights to the drilling rigs. The dollar amount shown represents Amoco's financial responsibility for the helicopters in the event the program is cancelled before the helicopters are utilized.

D. *Materials*—$2,500,000

At this date all materials have been ordered for the 1985 drilling program. This dollar amount represents an assumed 20% restocking fee for approximately $12,300,000 worth of total materials which have been purchased. Since all materials will soon be enroute to the Navarin Basin area, shipping charges have been incurred, but have not been included in this amount.

E. *Other*—$500,000

Consultants have been hired, satellite communications systems have been leased and a significant amount of company manpower has already been committed to the 1985 drilling program.

Total—$35,000,000

This figure represents the amount of financial burden Amoco will bear in the event that the 1985 drilling program is cancelled on or before June 1. The amount will increase substantially after June 1, 1985, as we actually commence operations in the area.

Amoco, as operator for itself and other interest owners, expects to spend at least $75 million in the 1985 exploratory drilling program for the Navarin Basin. An extensive effort has been made by Amoco and other operators to ensure that the impact on the environment from the exploratory drilling in the Navarin will be mitigated.

7. The practical result of any delay from an injunction preventing exploratory activity during any portion of the 1985 drilling season, would be twofold. First, due to the relatively short drilling season, it could likely preclude any exploratory drilling activity during the 1985 drilling season, even if an injunction was entered for only a few months. Secondly, an injunction resulting in delay would

be financially significant to Amoco as virtually all equipment is standing by and ready to be mobilized in May, 1985, to commence drilling activity in June, 1985.

8. A complete prohibition of the 1985 exploratory drilling season would cost Amoco and its partners a minimum of $35,000,000; most, if not all, of this would be unrecoverable in this or subsequent years, as they are based on contractual terms for the 1985 drilling season *only*. It is most certainly too late to mobilize this specialized Navarin array of equipment for use in other areas of the world. With such a significant loss, Amoco's potential future commitment to exploration in this area may be drastically reduced.

D. AMOCO'S SEISMIC ACTIVITY DURING 1985

9. Amoco will not conduct "shallow hazard" or "deep" seismic activity during the 1985 drilling season on the tracts leased in OCS Sale 83.

E. OIL SPILL CONTINGENCY PLAN

Attached hereto as Exhibit "A" is a brief summary of Amoco's Navarin Basin Oil Spill Contingency Plan and Response Equipment Summary. The complete Oil Spill Contingency Plan is covered in a 286 page document prepared specifically for Amoco's operations in the Navarin Basin. It has been previously submitted to the Mineral's Management Service as part of the overall regulatory approval process.

F. HARM TO THE NATION

10. The day when industry will be able to produce petroleum from the Sale 83 area recedes further into the future when exploratory drilling operations are delayed. Reserves located within the Sale 83 area are estimated by the Minerals Management Service to be in excess of 1.2

billion barrels of oil and 7.7 trillion cubic feet of natural gas (unrisked mean estimates). This compares to total U.S. proven Reserves, as of December 31, 1983, of 27.7 billion barrels of oil and 200 trillion cubic feet of natural gas. It should be apparent that the nation has a compelling interest in the expeditious development of these valuable energy resources.

/s/ R. J. CRISWELL
R. J. Criswell

STATE OF COLORADO)
CITY & COUNTY OF DENVER) ss.

The foregoing instrument was acknowledged before me this 7th day of May, 1985, by R. J. CRISWELL.

WITNESS my hand and offical seal.

/s/ GERILYN MARI
Gerilyn Mari
Notary Public

My Commission expires:
August 27, 1986
1670 Broadway
Denver, CO 8020

EXHIBIT A

AMOCO PRODUCTION COMPANY
NAVARIN BASIN OCS SALE 83 AREA
SUMMARY OF OIL SPILL CONTINGENCY
PLAN AND RESPONSE EQUIPMENT

The Oil Spill Contingency Plan for Amoco Exploration Operations in the Central Bering Sea (OCS Lease Sale Area No. 83) is designed to assist Amoco personnel and contractors in responding rapidly and effectively to oil spills that may result from the exploration and fuel transfer operations on the drilling rigs and vessels operating within the area. Two drilling rigs will be operating simultaneously in the Navarin Basin and will be refueled and resupplied from a tanker and wareship. A total of four supply boats will be used to transfer the fuel and supplies to the drilling rigs. In addition, a standby vessel (picket boat) will be stationed full time at each drilling rig for use in the event of emergencies (e.g., oil spills, evacuation, etc.).

The Amoco Spill plan complies with regulations of the U.S. Minerals Management Service (MMS) for exploration and development of the Outer Continental Shelf (OCS), Part 251 of Title 30 of the Code of Federal Regulations effective June 16, 1983, which incorporates OCS orders by reference. The Amoco Oil Spill Contingency Plan contains the following:

a. Provisions to assure that full resource capability is known and can be committed during an oil spill, including the identification and inventory of applicable equipment, materials, and supplies which are available locally and regionally, both committed and uncommitted, and the time required for deployment of the equipment.

b. Provisions for various degrees of response effort depending on the severity of the spill.
c. Provision for identifying and protecting areas of special biological sensitivity.
d. Establishment of procedures for the purpose of early detection and timely notification of an oil spill.
e. Provisions for well-defined and specific actions to be taken after discovery and notification of an oil spill, including:
   (1) Specification of an oil spill response operating team consisting of trained, prepared, and available operating personnel.
   (2) Predesignation of an oil spill response coordinator who is charged with the responsibility of and delegated commensurate authority of directing and coordinating response operations.
   (3) A preplanned location for an oil spill response operations center and a reliable communications system for directing the coordinated overall response operations.

Amoco's spill plan considers spill frequency and probable spill trajectories, includes the use of state-of-the-art equipment, and provides an on-site trained team for spill response, as well as a major spill response team of experts in their respective fields for complete and efficient spill cleanup.

Amoco has invested approximately $50,000 in the development of the Oil Spill Contingency Plan and has also contracted for development of a $50,000 Navarin Basin Oil Spill Training Program specific to the 1985 drilling program. Actual drills will be conducted by Amoco, and the boat and rig contractor personnel, with leased equipment dedicated to our drilling program. Leased equipment costs are estimated at $500,000 for the 6 month

program. Additional spill response equipment valued at approximately $500,000 is warehoused at Dutch Harbor. This equipment is owned by an industry cooperative, Alaska Clean Seas, of which Amoco is a member. This oil spill cleanup equipment is also available for Amoco's use in the event of a major oil spill.

AFFIDAVIT OF JOSEPH G. JORGENSEN

RE: PEOPLE OF GAMBELL

v.

HODEL (9TH CIR. NO. 85-3877)

I, Joseph G. Jorgensen, am a professor of comparative culture and social science at the University of California, Irvine. I earned my Ph.D. degree in anthropology and linguistics at Indiana University in 1964 and subsequently held positions at Antioch College, the University of Oregon, and the University of Michigan. At the Universities of Oregon, Michigan, and California I have been responsible for the field methodology and statistics training of all graduate students within my departments, and for teaching the substantive and theoretical courses dealing with American Indians and Eskimos, past and present. My current rank is Professor, Step VII. I have directed more than 25 Ph.D. dissertations based on field research among American Indian and Eskimo societies.

Before entering graduate school in anthropology I was employed for two years in several different capacities by the Uintah and Ouray Ute Indian Tribe of eastern Utah. I conducted field research on contemporary Ute economics, social organization, political organization, and religious movements while a graduate student, and wrote my dissertation on Ute history and modern culture, demonstrating the political and economic causes of changes to reservation Ute life. Since completion of the dissertation over two decades ago I have conducted field research among three Ute societies, two Shoshone societies, the Crow Indians, the Soboba Indians, Unalakleet Eskimos, Gambell Eskimos, Canadian Arctic Eskimos, and briefly with several other Eskimo societies, Aleutian societies, American Indian societies, and rural American Anglo and Chicano societies. A large portion of my most recent field

research, particularly that in which I have engaged during the past decade, has focused on the consequences to western American Indians from energy extraction and production projects conducted on their reservations, or near to them (see Jorgensen et al 1978, Jorgensen ed. 1984). My research publications include a book on a religious movement among the Utes and Shoshones and the factors which provoked and sustain it (1972) (the book received the C. Wright Mills Award for 1973 and a Pulitizer nomination), a book on the comparative analysis of Salishan language, environment, and culture (1969), and a book comparing the environments, languages, and cultures of 172 western American Indian societies (1980).

I am a John Simon Guggenheim Fellow (1975), a member of the Executive Board of Directors of the Human Relations Area Files, Inc. (Yale), a former Director (Dean) of the Program in Comparative Culture, a former Chair of the Department of Anthropology, University of Michigan, a member of the Executive Board of Directors of the Anthropology Resource Center (Boston), a former member of two committees of the National Academy of Sciences (one dealing with soils, another with mining and reclamation, on both my expertise focused on social consequences to Indians from contemplated extraction programs), the recipient of several grants from the National Science Foundation, the National Institutes of Health, the Wenner-Gren Foundation, and the American Philosphical Society, an associate editor on several academic journals, and I delivered the Fort Lectures (1980), the M. Crawford Lectures (1980), and the Leigh Lecture at the Diamond Jubilee of the Study of Anthropology in Utah (1982). I was the architect and principal social science consultant to the multi-disciplinary, National Science Foundation-sponsored (RANN division) Lake Powell Research Project (1971-5), and the principal

social science consultant to the Northern Cheyenne Research Project (1975-8). Both of those projects addressed the question of the relations between Indian societies and the naturally-occuring resources on which, and among which they lived, and the social and cultural consequences to Indians in both places from energy developments.

In 1981 I was invited by the Minerals Management Service's Socio-Economic Studies Program (then the Bureau of Land Management) to assist a contractor (Louis Berger and Associates) to analyze the probable consequences to Eskimo villages if they were to become principal or secondary staging areas for oil drilling and pumping operations. The intention of the contractor and MMS was to use my knowledge of the consequences to American Indians from energy developments to assist in forecasting the consequences to Alaskan Native villages from various involvements with oil extraction and transportation. I conducted field research in Alaska and in the Canadian administrative and oil staging towns of Inuvik and Tuktoyuktuk during 1981 and prepared a set of scenarios, treated as postulates, that could forecast changes to subsistence, economic, political, social, and religious life in Alaska Native villages depending on their involvement with OCS oil operations.

Other research assignments among Eskimo villages followed. I orchestrated MMS's social indicators project, a study of four NANA (Northwest Alaska Native Association) and four APIA (Aleutian-Pribilof Island Association) villages in which we empirically developed a panel of 47 indicators (variables) that are sensitive to changes occuring in village life, including subsistence, economics, household-family organization, political organization, demography, and village institutions (Jorgensen, McCleary, and McNabb 1985). In 1982 I consulted MMS's socio-economic analysis and update of Norton Sound, and in that year I also assumed the role of principal investi-

gator in MMS's harvest disruption project. The project comprised three study areas, St. Lawrence Island, Norton Sound, and the Beaufort-Chukchi Sea. My associates and I focused our temporal and field research on the villages of Gambell and Savoonga (St. Lawrence Island), Unalakleet (Norton Sound, for which I also had principal field research responsibilities), and Wainwright (Chukchi Sea). This research was intended by MMS to answer questions heretofore unanswered about the amounts of naturally-occurring, renewable resources harvested and put to use annually by the residents of each village, and to demonstrate the relations among the harvests of naturally-occurring, renewable resources and Eskimo culture, particularly the economic, kinship, and religious organizations, and the values, that is, significant symbols, attached to naturally-occurring resources by villagers. Our research teams spent between six months and one year in the several villages, and follow-up trips to the villages continue to the present. Published research documents from the projects are available through MMS (Jorgensen and Maxwell 1984; Little and Robbins 1984; Luton 1985). I am currently finishing, under contract with MMS, a comparative analysis of the relations among naturally-occurring resources, subsistence, and culture for the three villages. In 1984 I was invited to testify at the Round Table Sessions of the Inuit Circumpolar Conference's hearings on the Alaska Native Claims Settlement Act. I delivered the discussion piece on consequences to Native Americans from Federal laws.

I was contacted by James A. Bamberger, Esq., Alaska Legal Services Corporation, to read the "Hold Harmless" agreement filed by the federal government and the oil companies re Gambell v. Hodel and respond as to whether that agreement has any substantive relation to the accurate definition of, valid empirical assessment of, and protec-

tion of the subsistence way of life of natives in Bering Sea and Norton Sound villages. Inasmuch as I have spent the better part of the past three years analyzing these exact questions in detail as they pertain to the villages of Unalakleet and Gambell (and Wainwright), I recognize the importance and the severity of the question.

The National Environmental Policy Act of 1969, as revised to 1978, requires that state-of-the-art analyses be applied to the abiotic, biotic, and social environment, and to the relations among them that may be significantly affected by an alteration to the enviroment planned by man. Our investigations of Gambell and Unalakleet sought to provide state-of-the-art analyses, that is, logically correct, empirically warranted analyses of the relations among environment, man, and culture in those Bering Sea-Norton Sound villages. Our data and analyses appear in the MMS publications referred to above. Neither the data nor the analysis which our research teams present support the invalid logic, *non sequitur*, and serious omissions in the "Hold Harmless" agreement which threaten native subsistence life, hence native culture, in the villages of Bering Sea-Norton Sound.

The "Hold Harmless" agreement poses a dangerous threat to the subsistence ways of life practiced by the residents of the Bering Sea, from Unalakleet on the east to Gambell on the West. The former gain their subsistence livelihood as well as their principal source of cash from salmon, herring, and roe-on-kelp. The latter gain their subsistence livelihood as well as their principal source of cash from walrus and walrus by-products. Natives in both communities and everywhere else in the Bering Sea region are closely articulated with sea mammals, and their relations to sea mammals are central to their relations with the environment and to their definitions of themselves as hunters, as Eskimos. Gambell natives, and their relatives

in the sister village of Savoonga, are organized into patriclans whose members share the bag and quarry from hunting, fishing, and collecting trips—resources moving from those who were successful to those who were not through explicit networks of kinspeople. Beyond the patriclans which link persons from several households within villages and between Savoonga and Gambell, resources are shared with the elderly and with friends as the exigencies of the moment dictate. To be a successful extractor, and to share the fruits of the endeavor are crucial to being an Eskimo in Gambell, Unalakleet, and all other native villages in which I have worked.

At Unalakleet persons and families are not organized into patriclans, but the equivalent is the large, bilateral extended family whose members reside in several households but who coalesce to hunt, fish, and collect naturally-occurring, renewable resources. Those resources are shared throughout the family and with affines (in-laws) in the village and beyond. The elderly residents of the village are always remembered and provided with food for their tables. In turn, the unfortunate hunter, even the unfortunate village can expect to receive resources from relatives of affines in distant villages when extracting ventures have been unsuccessful, or when weather, ice conditions, or other natural but irregular problems affect the availability and harvests of natural resources.

At Gambell and Unalakleet, indeed, all villages of the Bering Sea-Norton Sound region, harvests of naturally-occurring resources are unpredictable from season to season and year to year. The variability in quantity and quality of resources is so marked within and between seasons and from year to year that we began to focus our research on how natives in Gambell and Unalakleet adjusted to fluctuating resources. We sought to know how and when secondary, or unpreferred resources were sought, and when and why kinship or friendship networks

were invoked to receive or to give food. It was evident that "low" levels of disruptions to the harvests of naturally-occurring, renewable resources were ubiquitous, the norm. Everyday adjustments were made to these disruptions by eating non-preferred foods, or foods provided by family and friends from those families' stored supplies.

Disruptions to the harvests of naturally-occurring resources to an entire village is a much different issue from disruptions to the harvests of a family, even though one family's misfortune affects many other families. For example, weather and ice conditions can reduce resource availability below the levels of a previous year, and can also reduce the distribution of the resources, as well as the seasonal span in which they occur. They may restrict access to resources by impeding or preventing travel, and they may cause spoilage to food already harvested. Late spring ice break-up in Norton Sound and still later break-up of the Yukon negatively influences seal and bearded seal hunting for all Unalakleet, Shaktoolik, Golovin, and White Mountain hunters, whereas early spring break-up negatively influences the harvests of greens, birds, roe-on-kelp, and herring. Both early and late spring break-ups occur often enough so that they are regarded as normal conditions by villagers.

At Gambell early break-up, coupled with stormy weather, high seas, or dense fog, can severely influence harvests of whales and walrus. Both may migrate past the village during conditions when they cannot be hunted persistently and vigorously. If, moreover, there is no drift ice or pack ice onto which walrus and seals can haul-out, even these populations migrate beyond the reach of St. Lawrence Island hunters. Inasmuch as St. Lawrence Island hunters are much more dependent upon sea mammals than are the villagers of Norton Sound, and because St. Lawrence Islanders have many fewer secondary and tertiary resources which can be extracted when harvests of

their staples are interrupted, the subsistence problems for villagers in Gambell, and their sister village Savoonga, become dire so soon as harvests of sea mammals are interrupted for a single spring season. In such instances, as occurred at Savoonga in 1982, villagers share their preserved and stored foods, and lean heavily on patriclan assistance networks in Gambell and Nome. Patriclan leaders, exercising their authority, collected the sea mammals which had been bagged by their clansmen, and redistributed them, so that all clan members gained their share. It made no difference whether the clan leaders resided in Gambell, Savoonga, or even Nome. They collected and redistributed the animals harvested by Gambell hunters.

The 1982 subsistence year at Unalakleet was provident, yet the Yukon River villages experienced disastrous salmon catches because of extremely high run-off (carrying debris which destroyed or fouled nets, made it difficult to place nets, etc.). As a consequence, Unalakleet families in which members were married to persons from the Yukon River villages sent large quantities of food to their affines in those villages. Those resources, of course, were redistributed.

The preceding examples, although brief, demonstrate how Bering Sea-Norton Sound subsistence economies are organized, and in particular how sharing operates to move subsistence resources from successful hunters to unsuccessful ones. The patriclan organization of St. Lawrence Island is the basis of the subsistence economy, economic organization, and social organization, and instrumental in the political and religious organizations. The prestige that accrues to household and clan leaders is through successful leadership in the extraction of naturally-occurring resources, and through fair redistribution, that is centralized collection and subsequent sharing of those resources with persons in need. These relations extend outward to affines and friends. Moreover, the successful

whaling captains on St. Lawrence Island, themselves usually patriclan leaders or leaders of clan segments, are responsible for storing huge quantities of the bowhead whales that are landed each year. Those portions are then redistributed to all members of both St. Lawrence Island villages at the annual whale festival each summer. At Unalakleet, the chief difference from Gambell is that the principal subsistence economic, economic, and social units are extended bilateral families.

Hunting, sharing, knowing the conditions of the environment, coping with those conditions, and managing personal and village affairs in a communitarian fashion in which maintenance of the environment and subsistence resources are the uppermost concern is the precise reason for which the villagers of Gambell requested ownership of St. Lawrence Island. They sought ownership and control of the island, through a federal trust relationship if necessary, rather than monetary remuneration from the Alaska Native Claims Settlement Act fund and the threat of going public and losing control of their corporation in 1991. The fears of 1971 when ANCSA was enacted have not abated and the provision to go public in 1991 is the precise reason for which Gambell natives have sought to drop the city form of government and the village corporation, while investing political and economic decision making in an IRA government with expanded authority. Indeed, during my first visit to Gambell in 1982 I was asked by the elected and appointed officials of the city government, the IRA government, and the village corporation the advantages of transferring land ownership and all other economic and political powers to the IRA government (and to federal trusteeship). I consulted Monroe Price, Dean of the Cardozo School of Law, Yeshiva University, and David Case, Attorney with Ziontz, Pirtle, et al, about the availability of such a move and passed the opinions on to the village authorities.

Gambell natives recognize the threats to their culture from federal law, as well as from the vagaries of weather and ice. They also recognize the threats posed by oil drilling, extraction, and transportation to their island, the naturally-occurring resources on which their culture is based and which sustain their lives, and to their limited sovereignty.

Unalakleet natives are equally cognizant of the threat posed to them by the public stock sales provision in ANCSA, to the consequences from becoming a secondary transportation hub for Norton Sound as oil operations increase, and to the consequences to the naturally-occurring resources on which their subsistence economy and cash economy is based from oil operations, increased growth and competition for those resources, and from the vagaries of nature.

Given the rigors of the Bering Sea-Norton Sound environments and the close connections between the Eskimo cultures of those areas and the harvests of naturally-occurring, renewable resources, the "Hold Harmless" agreement appears to be an ignorant and obtuse document. It surely doesn't qualify as a protection of the Eskimo way of life.

My central concerns are with sections (3)(a) and (b). The first three paragraphs of (3)(a), (1, 2, 3), are acceptable inasmuch as they specify that significant restrictions on harvests of naturally-occurring subsistence resources can be caused by the reduction of availability through decline, through alteration of their distribution or their location, or through delimitation of access by subsistence harvesters (extractors). These are measurable criteria, applicable to all Bering Sea-Norton Sound villages. There follows, however, a *non sequitur* in which "significant restrictions" are defined. By the "Hold Harmless" agreement, "significant restrictions" do not fit with the empirical reality of Eskimo subsistence and culture in the Being Sea-Norton

Sound area, hence the definition is a *non sequitur.* According to the authors of the agreement, significant restrictions shall not include "slight effect(s)" as opposed to "larger or substantial effects" on subsistence resources. Inasmuch as neither "slight" nor "larger or substantial" effects is defined, neither has an empirical referrent, neither is measurable, neither can be monitored. The issue, however, is the maintenance of the Eskimo subsistence life style and all that that phrase portends.

Our research demonstrates that low harvest disruptions are the norm throughout the Bering Sea-Norton Sound area. We have defined "low" levels of disruption. We have also defined "medium" levels of disruption. For example, at Unalakleet disruptions to combinations of three predominant staples and secondary food sources (any combination) for two consecutive seasons that render those resources inaccessible, or that destroy them after they are acquired satisfy the definition of a medium level of disruption. At Gambell, disruptions to two marine mammal species, or one marine mammal species and three other species, or six species other than marine mammals which render them inaccessible for two seasons of the year constitute medium level disruptions. Those definitions can be fitted with empirical data, hence can be monitored.

It is not known what the "Hold Harmless" agreement means by "slight effect(s)," but I presume it means something greater than the harvest disruptions that are experienced as the norm. If so, slight effects are, in fact, dire effects. And what, possibly, is meant by "large or substantial effects?" We define "high" levels of disruption for Unalakleet as disruptions which render inaccessible combinations of four predominant staples and secondary food sources throughout a year. Inasmuch as twelve of the sixteen types of naturally occurring resources on which Unalakleet natives rely are dependent on the sea, a major and protracted disruption to Norton Sound affecting some combination of four key sea mammals (seal oil, in par-

ticular, is eaten with virtually all preserved foods throughout the year), and/or fish, and/or waterfowl would have severe consequences for native subsistence regardless of the availability of land mammals, inland birds, and plants, and might affect tertiary food sources as well (marine invertebrates, roe-on-kelp, less exploited sea mammals). Noise from drilling might affect local availability of sea mammals, as might movement of oil barges, whereas a major oil spill, in conjunction with heavy and persistent storms through a winter, spring, summer, and fall, could affect access to resources, access to the spill area (perhaps ice locked and moving), deposition of oil in the tidal kelp, spawning migrations of anadramous species, haul-out areas for sea mammals, freezing of sea mammals, freezing of water fowl, inaccessibility of food for diving birds, and migratory routes for beluga and walruses.

At Gambell, "high" levels of disruption are defined as extending the conditions of a medium level through one more season. Gambell, then, so quintessentially dependent on a few major sea mammal species, would experience high level disruptions and crippling consequences in three seasons, rather than a full year as we forecast the case to be in Unalakleet. Indeed, high level disruption can be achieved even sooner if the Pacific walrus or any of the whale species are disrupted in the spring, or the three major seal species are jointly disrupted in the fall and winter.

The definitions of significant restrictions in the "Hold Harmless" agreements are meaningless. Yet, the applications of "significant restrictions" even though they are undefined and empirically unwarranted, are potentially pernicious. It is stated in (3)(b) that consequences shall mean losses of subsistence food or other physical subsistence resources. This, of course, is invalid logic inasmuch as there is no difference between "significant restrictions" and "consequences." Moreover, if the "Hold

Harmless" agreement were put into effect, we learn that consequences shall not include claims for psychological, cultural, religious, emotional, or similar losses. The losses referred to would be severe: deprivation of power, status, esteem, would surely follow from protracted slight, large or substantial effects on subsistence resources, assuming that our definitions of medium and high level disruptions are used to measure those disruptions. A quick perusal of the social and religious movement research literature will confirm this claim (see, for example, Aberle 1966, Jorgensen 1972, Mooney 1896). Kinship organizations will be altered as leaders can no longer provide for their kinspeople, affines, friends, and the elderly. Out migration may be required by families. Compulsory relocation inevitably has serious emotional, psychological, and cultural consequences for the relocatee (see Scudder and Colson 1982 for a summary of the research literature). Political and economic factionalism often results. And powerlessness generates a host of responses, too numerous to cite here. Eskimo longing for space and place, for their subsistence life style and the cultural rules which inform it and, at the same time, are based upon it, will be a deep problem. Yet, these "claims" are summarily dismissed by definition, just as significant restrictions shall not include slight disruptions by definition. The "Hold Harmless" agreement, if implemented, will be a travesty for Bering Sea-Norton Sound Eskimos, not simply their subsistence life styles.

The mitigations for large or substantial effects on subsistence resources are callous and incommensurable with the loss of naturally occurring species. Whales are treated as brothers, thanked for their gentleness and generosity, and shared in a festival of thanksgiving. In their place, the "Hold Harmless" agreement would substitute beef. Had the authors of the agreement an aggregate ounce of wit they might have poked in the history of federal

government-Indian relations for a culturally appropriate model for the substitution of beef for a naturally occurring subsistence resource on which a native people traditionally subsisted. For instance, at Rosebud and other Dakota reservations in the early 1880s, soon after the American bison population had been reduced from millions to about 1,500, and during the period when Dakota were restricted to their shrivelling reservations, the Indian were provided with rations of beef to replace the wanton destruction of the bison and the restriction of Indians from the chase. Indian agents had the idea of herding the cattle, which arrived on the hoof, to nearby hills, where they would be stampeded toward mounted Indians armed with pistols and short rifles (Pancoast 1883). Perhaps the "Hold Harmless" agreement could specify that beef would arrive on the hoof, dressed out with water wings. They could be dumped in the Bering Sea and the Gambell patriclan task groups could give chase in their 16′ skiffs.

/s/ JOSEPH G. JORGENSEN
Joseph G. Jorgensen
Professor
Program in Comparative
Culture and Social Science
University of California,
Irvine
Irvine, California 92717

Gillian Cannon, Notary Public

State of California)
County of Orange) ss.

On June 17, 1985, before me the undersigned, a Notary Public for the State of California, personally appeared Joseph G. Jorgensen, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he executed it.

REFERENCES CITED

Aberle, David F.
1966 The Peyote Religion Among the Navajo. Chicago: Aldine

Jorgensen, Joseph G.
1969 Salish Language and Culture. Bloomington: Indiana University Language Monograph Series 9.
1972 The Sun Dance Religion. Chicago: University of Chicago Press
1980 Western Indians. San Francisco: W.H. Freeman & Co.

Jorgensen, Joseph G. et al
1978 American Indians and Energy Developments. Cambridge: Anthropology Resource Center

Jorgensen, Joseph G. ed
1984 American Indians and Energy Developments II. Boston: Anthropology Resource Center

Jorgensen, Joseph G. and Jean A. Maxwell
1984 Effects of Renewable Resource Harvest Disruptions on Socioeconomic and Sociocultural Systems: Norton Sound. Anchorage: Minerals Management Service Technical Report Number 90.

Jorgensen, Joseph G., Richard McCleary, and Steven McNabb
1985 "Social Indicators in Native Village Alaska." Human Organization 44: 3-20.

Little, Ronald L. and Lynn A. Robbins
1984 Effects of Renewable Resource Harvest Disruptions on Socioeconomic and Sociocultural Systems: St. Lawrence Island. Anchorage: Minerals Management Service Technical Report Number 89.

Luton, Harry
1984 Effects of Renewable Resource Harvest Disruptions on Socioeconomic and Sociocultural Systems: Beaufort Sea. Anchorage: Minerals Management Service Technical Report Number 91

Pancoast, Henry Spackman
1883 Impressions of the Sioux Tribe in 1882 With Some First Principles in the Indian Question. Philadelphia: Franklin Printing Company

Scudder, Thayer and Elizabeth Colson
1982 "Conclusion". In Art Hansen and Anthony Oliver-Smith, Involuntary Migration and Re-Settlement: The Problem and Responses of Dislocated Peoples.

AFFIDAVIT OF RONALD L. LITTLE

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

Ronald L. Little, being first duly sworn, deposes and states that:

1. My name is Ronald L. Little, and I reside at 481 Spring Creek Road, Providence, Utah 84322. My educational experience includes a B.S. in Psychology from the University of Utah (1963) and a Ph.D. in Sociology from the University of Oregon (1970).

2. I am an Associate Professor of Sociology, and serve as Assistant Department Head and Director of the Institute for Social Science Research on Natural Resources, Utah State University. My academic specialties are Research Methods and Statistics, Philosophy of Science, Ethnic Group Relations, and Sociology of Natural Resources.

3. My experience with the subsistence communities of Gambell and Savoonga includes serving as Senior Scientist, 1981-1984, Harvest Disruptions Study, John Muir Institute, conducted for Minerals Management Service, Anchorage, Alaska; 1984-1985, continuing research and writing on St. Lawrence Island, partially funded by College of Humanities, Arts and Social Sciences, and Department of Sociology, Utah State University.

4. At the request of James Bamberger, attorney for appellants, I have examined and evaluated the likely consequences of the "Hold Harmless Agreement" for the Eskimo residents of St. Lawrence Island. The Agreement was submitted to this court by Amoco Production Company, ARCO Alaska, Inc., and Exxon Corporation, the U.S. Department of Justice and the U.S. Department of Interior.

5. Before assessing the consequences of the agreement, certain logical and/or linguistic problems with the Agreement must be discussed. The first problem encoun-

tered has to do with the definitions used to articulate the intended meaning of the phrase "significant restrictions." The first three definitions of "significant restrictions" contained in paragraph 3 imply that any reduction in resource populations (¶3(a) (1)), and alteration in resource distributions which leads to a reduction in resource availability (¶3(a)(2)), or any limitation of access by subsistence harvesters (¶3(a)(3)) constitutes a "significant restriction." However, the last sentence of that same paragraph states that " 'Significant restrictions upon subsistence uses' shall not include 'slight effect[s] as opposed to large or substantial effects.' " Insofar as this fourth definition follows the first three difinitions, it must be assumed that the meaning of this definition supersedes the meanings contained in the first three definitions and that significant restrictions are limited to "large or substantial effects."

6. Even if such an assumption is made, the definitional problem is not resolved, for nowhere in the document are (a) slight, (b) large or (c) substantial effects defined. Without specific rules for quantifying these three levels of effects, any determination or evaluation of significant restrictions upon subsistence resources is dependent upon the whim and fancy of the observer/evaluator. *Compare* R. Little and L. Robbins, *Effects of Renewable Harvest Disruptions on Socioeconomic and Sociocultural Systems: St. Lawrence Island,* Alaska OCS Socioeconomic Studies Program, Technical Report No. 89 (June 1984) where we distinguished between low, medium and high level subsistence disruptions.

7. In addition to the absence of quantification rules for determining the levels of harvest restrictions, nowhere in the Agreement is the process for selecting an observer/evaluator specified, nor are the technical and/or professional qualifications of a person who is to be considered for such a position delineated.

8. Finally in this regard, the Agreement provides no mechanism or procedure for continued and regular monitoring of any significant restrictions upon subsistence uses. Without continuous scientific monitoring, any claims presented to the energy firms by Natives for relief under paragraph 5 of this Agreement become subject to dispute and could force St. Lawrence Islanders into more-or-less continuous litigation. Insofar as Island governments can ill-afford the financial burden of litigation, the Agreement places undue hardships upon all-too-scarce Island resources.

9. A second definitional problem is encountered with the definition of "consequences." As defined in paragraph 3(b) the term loses its traditional meaning: "Something that logically or naturally follows from an action." *The American Heritage Dictionary,* Second College Edition, Houghton Mifflin Company, (1982). In the Agreement consequence is transformed into "losses of subsistence foods." Agreement at ¶3(b). In essence, "consequence," as defined, becomes equivalent to "significant restrictions upon subsistence uses" and the first sentences of paragraphs 1 and 2 become non sequiturs.

10. Ignoring the logical and linquistic problems just discussed, paragraph 3(b) creates significant problems in any evaluation of the consequences (normal usage) of the Hold Harmless Agreement. As a result of the nominal definition introduced for the term consequences, paragraph 3(b) specifically excludes from consideration as "significant restrictions upon subsistence uses" all non-physical human ramifications. That is, any direct or indirect effects upon the culture or social structures of the St. Lawrence Island Native communities are considered by the Agreement to be irrelevant or trivial.

11. Furthermore, paragraph 5 states that any awards to Island residents as a result of subsistence harvest reductions will be paid in cash, rather than in kind. While at-

tempts have been made to place dollar values on subsistence resources (*see e.g.*, R. Wolfe, *Norton Sound/Yukon Delta Sociocultural Systems Baseline Analysis,* Alaska OCS Socioeconomic Studies Program, Technical Report No. 72 (October 1981)), such attempts are necessarily based upon assumptions unique to a capitalist economy, not necessarily upon scientific criterion. The Agreement thus reflects an extreme cultural bias, one that favors the ideological and economic structure of the dominant segment of American society. In a society such as that found on St. Lawrence Island, cash repayment for the loss of naturally recurring resource species will not be viewed by most residents as even a rough equivalence. From their point of view, it is impossible to conceive of such an equivalence. Money simply cannot replace the subsistence resource base. Money can ease the pain of physical hunger, but not cultural stress, or psychological pain. (In conversations this past week with Gambell residents a good deal of black humor was directed at the prospect of replacing the subsistence resource base with food stamps or MacDonald's restaurants. It was suggested that perhaps the food stamps could be made in the shape of walrus so that they would truly replace Native foods).

12. The Hold Harmless Agreement, while consistent with the prevailing worldview of contemporary American society, is at odds with the cultural preferences of Island Eskimos. From their perspective, it is impossible for them to be "Held Harmless." Even if the restrictive interpretation of the consequences of off-shore oil/gas activities is ignored, and it must not be ignored, the Agreement gives only the illusion of protecting Native interests. It is a unilateral declaration, not a bilateral agreement. It protects only the financial interests of the energy firms, protecting neither the subsistence economy nor the cultural interests of St. Lawrence Islanders.

13. The restrictions of paragraph 3(b) cannot, as already noted, be ignored. While the effects of hunger which would result from harvest disruptions must not be underestimated, neither can the cultural consequences of harvest disruptions be trivialized. Just as American society is organized around our economy, St. Lawrence Island society is organized around their subsistence economy. However, insofar as Native culture makes no meaningful distinctions between economic and other activities, disruptions to the subsistence collection system have consequences far beyond what might be observed in non-Native society. Whereas participants in the dominant society frequently compartmentalize their lives into work and play categories, frequently working only in order to purchase recreational time, the holistic worldview of these Yup'ik speakers provides for no such compartmentalization (*see generally* Little and Robbins (1984)). Work and play are integrated and occupational colleagues, and same-sex friends and relatives are, for the most part, the same people.

14. While these Yup'ik-speaking Eskimos organize their activities around hunting, gathering, processing and distributing subsistence resources, the patriclan provides the organizing principle. Patriclans are non-local kin groups in which descent is determined through the male line. Inmarrying females are incorporated into the patriclan, while giving up membership in the clans of their birth. The eldest member of the clan, male or female, assumes leadership of the patriclan and provides advice on a wide range of issues from marriages, the naming of children and dispute resolution, to the determination of hunting practices and major purchase of subsistence equipment. With few exceptions hunting, fishing and gathering crews are organized around clan affiliations. Segments of the patriclans work and play together with great frequency as subsistence crews. Most generally these subsistence crews are

comprised of brothers and their own sons and/or nephews, i.e. clan segments. Summer fishing and gathering crews also include wives, daughters and nieces.

15. Disruptions in the availability and/or harvest of subsistence resources would alter these social structures in significant ways. As used here social structures refer to patterned behaviors, that is, repetitive behaviors among and between individuals. To the extent that harvests are disrupted, so are the associated behaviors. In less extreme cases, even though hunting activities may increase as crews attempt to equal past harvests in the face of a reduced resource base, the sharing network which is extensive and includes all Native residents of both Gambell and Savoonga would be altered. With less to share, there would be less sharing. As the reduction in sharing continued there would be deterioration in the network (*see* R. Little, and L. Robbins, *The Yup'ik Eskimos of St. Lawrence Island, Alaska: A Social Impact Assessment of Proposed Energy Development,* Chapter 8 in P. Savatsky (ed.), Social Impact Assessment Series, Westview Press, Summer 1985, for a more complete discussion of this process).

16. The longer and/or more extreme the disruption, the more devastating the results. As subsistence activities produce less and less, cash and credit resources are utilized to purchase foods to replace subsistence foods. While non-Native foods are consumed on St. Lawrence Island, there is an obvious preference for Native foods. Even the eating patterns are different when non-Native foods are consumed. Sitting around a common food tray on the floor is a pattern reserved only for eating Native foods.

17. As the reasons for interacting with other members of subsistence crews decrease as a result of disruptions, so do the number of interactions. With the latter comes an erosion of the social system. Furthermore, as cash and credit reserves dwindle, decisions to hunt may become less numerous for both psychological and financial reasons.

Regarding the former, learning theory would lead us to predict that decreased hunting successes leads to fewer decisions to hunt. In regard to the latter, money for gas and other supplies may not be available. Ultimately, a choice must be made: to hunt or purchase food from local stores (assuming that such food is even available).

18. In the most extreme instance of harvest disruptions resulting from off-shore oil/gas activities in the Bering Sea, an extended and extreme disruption, there would be a breakdown of the entire social system. In such an event, a vital culture would be lost as subsistence activities ceased to be replaced by welfare payments or out-migration to the mainland. The creation of a healthy cash economy on the Island in the absence of a resource base is a most unlikely event.

19. Because of the potential severity of harvest disruptions, the extended consequences of off-shore oil/gas activities cannot be ignored. The social consequences of energy development in the Bering Sea are at least equal in importance to the simple and direct physical consequences. But, like the physical consequences, it is conceptually impossible to create a "Hold Harmless Agreement." How does one compensate a people for the loss of a social system or an entire culture?

20. The Agreement, as it now stands, protects only the energy firms, even if the focus of the agreement is restricted to the direct physical impacts of harvest disruptions. If the equally important social and cultural consequences of harvest disruptions are considered, the Agreement is totally inadequate to the task of protecting a Native people and a way of life, a way of life that has continued uninterrupted since at least the time of Christ. *See* Little and Robbins, (1984). For these reasons, it is my expert opinion that the "Hold Harmless Agreement" filed with this court is completely inadequate and does not protect the Native people of St. Lawrence Island from pos-

sible adverse consequences resulting from exploration of the leases in Norton Sound and the Navarin Basin. Nor, given the particularities of Native life in and around the Bering Sea, can I contemplate any agreement which could effectively protect these people from the adverse consequences of oil and gas activities.

/s/ RONALD L. LITTLE
Ronald L. Little

SUBSCRIBED AND SWORN TO before me this 14 day of June, 1985.

DONALD COOPER
Notary Public in and for the
State of Alaska
My commission expires: 4/13/88

In the Supreme Court of the United States

No. 85-1239

AMOCO PRODUCTION COMPANY, ET AL., PETITIONERS

v.

VILLAGE OF GAMBELL, ALASKA, ET AL.

ORDER ALLOWING CERTIORARI. Filed June 2, 1986.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. This case is consolidated with 85-1406, *Donald P. Hodel, Secretary of the Interior, et al.* v. *Village of Gambell, et al.*, and a total of one hour is allotted for oral argument.

In the Supreme Court of the United States

No. 85-1406

DONALD P. HODEL, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS

v.

VILLAGE OF GAMBELL, ET AL.

ORDER ALLOWING CERTIORARI. Filed June 2, 1986.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. This case is consolidated with 85-1239, *Amoco Production Company, et al.* v. *Village of Gambell, Alaska, et al.*, and a total of one hour is allotted for oral argument.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1986—491-507/20521